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SOCIAL JUSTICE AND LEGAL EDUCATION.¹

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THE question—what is legal education doing for social justice, brings us quickly to the fundamental inquiry: How is our common law system working as a social instrument? We can state the answer to that question at once, and at the same time, state the thesis of this discussion. Our Anglo-American common law system, with its primary principle of evolution through decisions, and its secondary principle of cure and mutation through statute, is inherently capable of co-ordinating itself with the people's life vigorously and efficiently. But it has failed us at vital points as a social instrument, under present conditions; and under the political and economic developments which lie ahead of us, it must fail us still more, unless it can be clarified and fused with the aspirations of the people. The bar of to-day is incapable of bringing this about. Legal education has not, up to now, taken cognizance of the failures of the law as a public agency; but it must now face them as facts. The law schools of this country are confronted with the great task of infusing into our legal system that element of responsiveness to the evolution of thought under changing conditions which alone can make it fulfil its proper function as a tool of justice. But this thesis carries no implication of despair; because legal education, under a few pre-eminent leaders, is beginning to see its problem. In mastering it, however, it will need large support in the first instance from the universities, and finally, from a public which shall be made to understand the vastness of the issue at stake.

Let us mark clearly now the scope of this discussion by definition and delimitation. First, we are standing four-

¹This article which appeared originally in the *American Law Review* for Jan.-Feb. is reprinted by permission, in the belief that its discussion of defects in our legal system and of the remedy is of general interest.

square upon the proposition that law is a part of sociology—a branch of the science of human society. As a branch of that master science, it must harmonize with all facts, material and psychical, within which man finds himself. Second, we shall consider here primarily the teaching of law for practice of the profession of law. This should be remembered, because specialized legal education of high character is now being given by some of the universities in their departments of Political Science. For instance, at Columbia in this department, Constitutional Law, Administrative Law, International Law, Roman Law, and Comparative Jurisprudence are taught,—the first three largely with the aid of case books. And this university announces that one of the definite objects of this department is specific training for public service. Here is a beginning in special legal training for public service which is already valuable, and which, with an extension of the principles of civil service reform, can prove progressively more so. It should be mentioned, though, in passing, that the administrative body is largely supplanting the courts in several areas of jurisprudence, and that separate law-teaching for these branches of legal public service elsewhere than in the law schools, suggests a widening of the gap between the administrative and the common law systems of adjustment, and a stimulus by the form we are giving our educational machinery to the evolution of a dual system akin to that in France and in Germany. Perhaps such a development is coming, but it would seem that if our common law system can be brought to serve efficiently the cause of progress, such a splitting of governmental functions may not prove necessary; that by a better co-ordination between the function of expert dealing with fact on the one hand, and the function of expert determination of law on the other hand, it may be possible to preserve the essential unity of our legal system; and that any settled policy of educational segregation with reference to the two systems at this time may be premature and unfortunate. Furthermore, it would seem certain that to the extent that civil

service reform reaches higher administrative officers, public attorneys and the bench, specific work of preparation for these positions should be carried on in law schools if they can be brought to adapt themselves to such particular needs. But this is parenthetical, especially because any realization of the potentialities of the law school, as such a training ground for public service, must come after legal education has solved the problems which we are about to consider. The training for the legal profession under present conditions is the subject of our discussion.

In these limits we shall deal only with the university law schools for this reason: In the forty-nine states the tests for admission to the bar vary, from the stiff requirements of New York, calling for four years of preparation, to the certificate of good moral character, which in Indiana still admits an applicant who has never opened a law book. Although many a poorly trained lawyer of native ability rises to a most honorable pre-eminence, it must be conceded that in states having slack standards of admission, the public is exposed to an annual invasion of young pirates who inevitably form some proportion of men so admitted, and who are totally blind, ethically and intellectually to the deep significance of the profession in which they are to win their bread and butter. Largely because of the low standards of admission, only about 8,000 out of approximately 30,000 students studying law in the United States to-day are in the university law schools. It is safe to predict that when, through changed methods of teaching, the university-trained lawyer has begun to justify himself socially, and when the American people have recognized in bad legal training an unreckonable burden in social cost, and a real source of public danger, high standards for admission to the bar will be established. At present the low-grade lawyer in our state legislatures is the principal enemy of higher standards, but the public will sweep him aside when it understands the issue.

When we consider that there is only one lawyer to every 800 inhabitants in the United States, we may wonder some-

what at the power which he has exerted. But his opportunities have been quite unique. He has come to exercise this power in the thousands of personal contacts incident to the practice of his profession, and in the publicity which he has enjoyed as the traditional community spokesman; again as a judge; finally as legislator and as executive, his ideas have for generations determined the form of the imperative, or statute law, and the spirit of its enforcement. Certainly then by socializing the lawyer we shall greatly re-enforce and develop efficiency in the making and administration of our law.

But the influence of the bench and bar has steadily declined in America. Outside of certain relatively prosperous groups in the community, the lawyer is generally suspected and disliked; and he knows it. Let it be known that the lawyer favors a legislative measure, and the farmer, labor representative, and small merchant conspire to kill it. The free press and the people are often found opposing lawyers, on principle, for public office. What is more serious, the lawyer's personal honesty in his profession is under widespread suspicion. According to Bryce,² this feeling against the lawyer was already strong a quarter of a century ago; it is undoubtedly more acute to-day.

But the decline of lawyers in public esteem has its cause far deeper than in any moral shortcoming of the lawyer. It lies in the history of the common law, in the unescapable psychology of defective principles which have been allowed to survive, to gain headway in the system, and to overgrow it in many places. The changed position of the lawyer is but the symptom of social diseases in our law.

Let us briefly identify the most marked of those disorders with a view to diagnosis and to social prognosis.

First we come to the juridical misfits due to the fact that most of the principles of contracts and torts were evolved in a crude industrial stage, and developed under a purely individualistic idea of law. The concentration of industrial

² *The American Commonwealth*, 2nd Ed., Vol. 11, pp. 497-510.

processes, and the new conception of persons as members of industrial and economic groups, have brought many of these old common law principles into sharp antagonism with newly entrenched norms of morality. But the courts have persisted in applying their individualistic principles of a bygone era. For instance, the fellow servant and contributory negligence doctrines evolved in the small hand-labor shop of medieval England were applied with abstract pedantry to the great establishments of to-day where hundreds work together in jungles of whirring and pounding machinery. This is typical of many failures of our legal system in matters of social justice affecting the worker and the consumer. It will take time for us, through the course of labor legislation upon which we have now entered, to undo the multitudinous injustice and cruelty wrought by two generations of judges who have not had public vision enough to see that the old rules were inapplicable to modern conditions. Legislation only can cure such deep-rooted growths, and it has encountered, and will still encounter, the obstructive intellectual hostility of many courts.

Our criminal law does not take cognizance of important classes of acts which should be punishable. In its old areas it has been at many points for upwards of a century at distinct cross purposes with social justice and public policy even as popularly conceived. Modern criminology and penology have proved to us that many of the old criteria of responsibility for public offenses, and of the modes of punishment, must undergo complete reconstruction. But, generally, judges and lawyers have been helpless before this mounting problem, because they have had no grip upon its scientific bearings; they have often unconsciously sought to escape from it, shielding the accused by creating exaggerated technicalities of criminal procedure, which have in turn demoralized the entire administration of criminal justice.

A further disorder of our law, although not involved in the social conflicts of the present time, is so pervasive, and

of such a character as to raise distinctly the issue of social justice. The major part of our private law is still largely removed from the social disturbance due to economic changes, and to scientific realizations. Many fields of torts and contracts, of real and personal property, of taxation, of wills, corporations, banking, equitable rights, suretyship, agency, insurance, partnership and other topics, are as yet untouched by social dynamics. There are in these fields, it is true, rudimentary and illogical principles commercially inexpedient, or ethically retrogressive, which rise up to plague sound public policy and valid juristic development; yet on the whole, these fields present to modern formulation a great methodic body of principles rich in intellectual distinctions, and vigorous in reasoning. But even here keen pedantry of lawyers absorbed in the game of litigation, possessed by what has been called "a sporting theory of justice,"³ have entangled justice in the thickets of procedural technicality. These technicalities waste unreckonable time of parties and witnesses, produce ruinous delays, and enormously increase the cost of litigation. They frequently result, after months or years, in a case failing to be heard at all upon its merits. They have helped to produce a prevalent belief that the poor man has no chance to get justice in the courts.

The jury was fastened upon us as a bulwark of individual liberty by our Federal Constitution. Since then, England, which gave it to us, has herself largely abolished it in its Judicature Acts. A treatise could be written about its unfortunate effect in America, both upon court procedure and upon the law of evidence.

The law of evidence, although an admirably refined body of logical tests for different kinds of evidence for its probatory value, often seriously obstructs justice. Applied under the jury system now in use in most of our state courts, the law of evidence would seem to be based upon the theory that the law is to be administered by a jury

³ See "Causes of Popular Dissatisfaction with the Administration of Justice," by Roscoe Pound, *American Bar Assn., Proceedings* 1906, Vol. XXIX, p. 395.

with an abstract knowledge of life, and no knowledge of law, and by a judge with an abstract knowledge of law, and no knowledge of life. Juries, on account of their assumed incapacity for appraising testimony, are often called upon to decide cases without having been acquainted with essential facts; and courts, because of their assumed inability to guide juries safely in their conclusions on the facts, are frequently compelled to deliver instructions so abstract and so complicated that juries disregard them as being practically unintelligible. This impossible result could have grown up only under a scholastic, individualistic conception of law surviving into modern industrialism. Justice to be justice must deal wisely with all the facts. Professor James Bradley Thayer,⁴ nearly twenty years ago, advocated a statutory simplification of the law of evidence, and more recently, Dean Wigmore⁵ has reluctantly suggested its codification as a possible refuge from its evils. But events have far outfooted any reform in the law of evidence. The class issues of industrial concentration pressingly demanded the specialist before whom all facts could be brought, and by whom they could be wisely evaluated. A result has been the creation of the railroad and public utility commissions, the Federal Trade Commission, the industrial and workmen's compensation boards, and other administrative bodies; and the statutes creating these administrative bodies are undertaking to provide that conclusions of fact of the specialists serving upon them are binding on law courts which come to review their decisions. Dean Pound has pointed out a tendency of the administrative bodies themselves to adopt a technical court procedure, and to apply the ordinary rules of law.⁶ But whether he be called in the end an administrative official, a court-commissioner, or a judge, it would seem certain

⁴ "The Present and the Future of the Law of Evidence." 12 *Harvard Law Review* 70 (1898).

⁵ Section 8 of Introduction to *Treatise on the System of Evidence in Trials at Common Law*, (1904).

⁶ "Justice according to Law" pamphlet, p. 42; reprinted from *Columbia Law Review*, Dec., Jan., and Feb., 1913-14.

that the judicial officer who is an expert on special departments of fact has come to stay, and that he will occupy a growing field of judicial activity with a final status eventually for his conclusions of fact.

Summing up, then, the chief defects in our legal system,—first, its inability to adapt itself to changing standards of public policy; second, its procedural vices, and third, its obstructive law of evidence,—we find that they seem to be an inevitable result of the aloof scholasticism of the lawyers which disables them from visualizing concretely the working of the principles which they create.

But the argument is made that the defective principles of the system became fixed in rudimentary form in its early stages, and that, owing to our rule of *stare decisis* ("to stand by the decisions"), they had to persist, pernicious though they might be; that consequently, the chief failures in our legal system are a necessary result of the principle of *stare decisis* and not of the impenetrability of lawyers and judges to changing public standards. This argument is heard so often from critics that it becomes perhaps the crucial point in any preliminary fight for the effectualization of our law. There prevails an impression among laymen which is to be found largely even among lawyers, that the principle of *stare decisis* necessarily presents the great social stumbling-block of our Anglo-American law. But this impression is erroneous. There is, strictly speaking, no such principle in the common law as *stare decisis*. Like many a catch-phrase, it is harmfully deceptive, because it suggests only part of the rule. For the correctness of this statement, we have perhaps time to quote from expressions uttered a number of years ago by two eminent authorities who may each be regarded as distinctly orthodox. The late Professor John Chipman Gray, after making an historical survey of the status of the precedent, drew the following conclusion:⁷

⁷ "Judicial Precedents. A short study in Comparative Jurisprudence," 9 *Harvard Law Review* 27, (1895).

“ . . . the rule of the common law is that aside from their intrinsic merits as the expression of the opinion of able and learned persons, the actual decisions of a court are of great weight with that court and all co-ordinate courts, and are absolutely binding on all inferior courts. It seems impossible to give the force of judicial precedents in the common law more exactly; they have great weight, but not irresistible weight. Their decisions can be (and I mean can be, according to the theory of the common law) overruled or not followed. Any attempt at more precise determination would result simply in a theory by the particular writer as to what would be desirable rules, and not of what are in fact the principles which govern.”

Judge T. M. Cooley, in discussing the force of precedent, said:⁸

“It will of course sometimes happen that a court will find a former decision so unfounded in law, so unreasonable in its deductions, or so mischievous in its consequences as to feel compelled to disregard it. Before doing so, however, it will be well to consider whether the point involved is such as to have become a rule of property, so that titles have been acquired in reliance upon it, and vested rights will be disturbed by any change; for in such a case it may be better that the correction of the error be left to the legislature which can control its action so as to make it prospective only, and thus prevent unjust consequences.”

We may, therefore, say that the principle of *stare decisis*, if properly stated, would be: “Stand by the decisions unless they are, or become, manifestly inexpedient.”

The institution of the precedent is uniquely fixed in the Anglo-American system of law; no other legal system gives it so high a place. It came into use by chance in the century following Magna Charta as a weapon for the King's courts in his struggle against the barons and the Church;⁹ but with its qualification it has lent to the common law its two towering qualities—first, its vigor derived from the continuous refreshment of its basic principles, and second, its flexibility, resulting not only from its power to evolve new principles based on distinctions, but also from its power to overrule pernicious precedent. Far too little

⁸ *Constitutional Limitations*, 7th Ed., p. 86.

⁹ James Bryce Address, “The influence of National Character and Historical Environment on the Development of the Common Law,” *American Bar Assn.*, 1907, Vol. XXXI, p. 444.

attention is given by the bar to the great masses of juridical wreckage strewn along the pathways of the common law. There is a sort of pathology of the overruled decision which should be made part of the mental equipment of every lawyer who is sent out from the schools to practice and to judge. Professor Williston's recent suggestion in a profoundly sane address,¹⁰ that the practicing lawyer is apt to be a defective teacher because "the doctrine of *stare decisis* binds him too firmly," is a confirmation of this statement. In earlier times, although the precedent was perhaps theoretically stronger than to-day, reported cases were few, so that there were many arguments of counsel and opinions of courts in which the ship of reason and of principle still sailed under full canvas gloriously through her troublesome sea of fact. To-day, when thousands of adjudged cases are issuing each year in the reports, she sails timorously with shortened canvas, convoyed successively by precedent on precedent, and is finally even made fast to her moorings by a precedent. Lord Bryce said in this country in 1907:¹¹ "the maxim 'an ounce of precedent is worth a pound of principle' still expresses the attitude of the profession in England, and very possibly here also." As usual, this wise and courteous observer was right.

Statute, as part of our common law system, will always be a vastly important complement of law built up on decisions, or what has been called judge-made law. Under a rationalization of *stare decisis* and a socialization of legal thinking, our judge-made law will be better able to enforce the moral judgments of the time; and this flexibility of the law will in turn, by sharpening the ethical sense with which business is conducted, tend to obviate both the danger of illegitimate judicial legislation, and the necessity for legitimate statutory law. But, as Dicey points out,¹² judge-made law has the inherent limitation that it cannot openly

¹⁰ "The Necessity of Idealism in Teaching Law," *American Bar Assn.*, 1908, Vol. XXXII, p. 780.

¹¹ Address mentioned above; *American Bar Assn.*, 1907, Vol. XXXI, p. 444.

¹² A. V. Dicey; *Law and Opinion in England*, Appendix, Note IV, p. 486.

create a new legal principle, but must always deduce a new principle from one already established. Furthermore, judge-made law may, through a long course of precedents in some field of rights, wall itself in by a structure of principles from which there is no escape except through statute. Again, statute only can carry with quickness and consistency a newly admitted moral idea into a diversely applied principle of law. Therefore, legislation will always be needed at some points to make our private law function properly. It is certain, however, that much legislation of the past would never have become necessary if courts had been alive to sound public policy.

We can surely conclude that the principle of *stare decisis* did not necessitate the development of the present evils in our legal system. The very aloofness of legal tradition and training from the facts of life constantly allows the *stare decisis* idea to have larger sway than even the common law system theoretically allows to it. In other words—*stare decisis*, is, on the whole, rational enough in theory; it needs to be rationalized in practice. And even when the limitation of the power of precedent is understood, judge and lawyer are often incapable of visualizing actual conditions, and of sensing those pressures which would tell them when a principle of law procedure or evidence is, to use Judge Cooley's words, "so mischievous in its consequences" as to compel its repudiation.

Are we not, then, in a position to re-state the conclusion at which we arrived before being confronted with the effect of *stare decisis*,—that the evils of our legal system are not to be traced to ethical perversion in lawyers and judges, nor to any perniciously obstructive element inherent in the system itself, but mainly to the social astigmatism of the lawyer?

Mr. Justice Holmes suggested the vital importance to us of the judge with an alertness for public welfare implications when he said:¹³

¹³ *The Common Law*, pp. 35, 36.
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"The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less, traceable to views of public policy in the last analysis."

But, as there suggested, such a fortuitous and socially subconscious method of development for our legal system based on instinct and inarticulate convictions, is exactly the method which we must avoid in the future as far as possible. It has led in the past to periods of prostration of law due to destructive cumulations of injustice; it has resulted in the evils which we have just been considering and which to-day are blunting many of our best aspirations. No applied art can longer proceed unconsciously. The conclusions of science are moving resistlessly into every department of thought; they must claim in the end the entire art of the adjustment of human rights.

The lawyer and judge of the future must have a thorough grasp of sociology, economics and legal history. They must have a deep sense that law is an organic body of thought tending constantly to perfect itself as the means to an end. They must stand consciously ready in any legal cause, subject to a true appraisal of precedent, articulately to call into operation "the unrecognized principle and the half-recognized principle." They must be the leaders, when judge-made law has exhausted its possibilities in any field, or when fixed and valid considerations of public policy demand new principles, in creating statute law to meet the new necessities. Such a mental attitude cannot conceivably be taken on at the bar.

This means that if our common law system is to serve the future safely, legal education can no longer be only legal education. The socialization which the lawyer needs must, in a man's youthful formative time, be wrought into

the very fibre of his thinking. And that is the work which confronts the universities.

The American university law schools have begun to see their task. But a first condition to constructive reform is a plan. The Langdell case system of law teaching under which the student learns principles not from text books, but from analysis of actual decisions, has brought us a generation of great teachers. These legal scholars, for the first time, have been reducing the immense mass of decisions under the various topics of the law to a body of formulated principles, at many points inconsistent, but on the whole capable of being wrought into a coherent structure. Systematization of the theories of the common law, and the production of abler lawyers,—these have been the main fruits of the case system up to this time. But in the best schools, almost up to the present time, little or no attention has been given either to the history of the life and thought in which the law germinated and grew, nor to the philosophical basis or purpose of law, nor to a comparison of legal systems which would have brought with it a direct examination of *stare decisis*, and of the principles of legislation. A dozen years ago under Dean Wigmore at Northwestern, there were introduced lectures and prescribed reading in legal history and philosophy and comparative jurisprudence throughout the three year course, on which work examinations are held; but this example seems to have been followed only to a very limited extent by a few schools. In the Northwestern school we find Legal Ethics being taught to-day, not as an optional course, as in most other schools, but as a prescribed course. These features of the Northwestern University Law School seem to be the high-water mark of adjustment, by catalogue at least, through specific and prescribed courses, to the changing ideas in legal education for the lawyer's degree. Among the first-class schools one finds new and significant courses in the third year, but these are elective, not prescribed. Thus at Northwestern again, Criminal Procedure is taught in connection with Healy's study of "The Individual Delinquent";

there are courses in Jurisprudence and in the Evolution of Law; and a course on Problems in Contemporary Legislation is given under Dean Wigmore. At Michigan there are courses in Jurisprudence, Procedural Reform, and Theory and Practice of Legislation; at Columbia, English and European Legal History, Roman Law and Modern Civil Law. But the pressure of work in the strictly professional courses allows to the undergraduate only a limited use of these elective opportunities. Several of the first-class law schools, within the past few years, have established a fourth year postgraduate course which offers studies of this character for a higher degree.

In a series of addresses and of articles written for legal journals during the past decade, Dean Pound of Harvard has, as a leader, expounded the sociological conception of law evolved by European thinkers, and has argued powerfully for its application to our legal development. His ideas have stirred legal education into a ferment of self-analysis, and have profoundly interested the best opinion at the bar. In general, thus far, he has confined his constructive pedagogical suggestions for teaching law school undergraduates to emphasizing the need for a new attitude of the law teacher in examining cases in the classroom. Although the Harvard Law School offers to postgraduates thoroughgoing cultural work of the character just mentioned, it does not prescribe any of such work in its curriculum for the LL.B. degree, and affords to the undergraduate small opportunity for including it by election without prejudicing his professional preparation.

Unquestionably, the problems of adjustment in legal education to the sociological conception of law are extremely difficult to solve. In the first place, the law schools are compelled to turn out lawyers who can practice law successfully; and the essentially professional courses alone, as at present conducted, require a high pressure of work for the entire three years. To add an additional year to the course has its distinct disadvantages, the main one, perhaps, being that every year of student life, after the

age of twenty-five, tends seriously to impair a man's capacity for personal adjustment, which is an immensely important element in most successful legal careers. Even in Germany, where legal education runs a course of eight years, the average age for admission to the bar seems to be about twenty-five years.¹⁴ But the Legal Education Section of the American Bar Association in August, 1916, went on record in favor of a four year preparation for the bar, the last year of which must be passed either in a legal clerkship, or in postgraduate work in an approved law school. Strong opposition to this four year plan may be expected to develop, especially from those who believe that the number of cases covered in class could be greatly curtailed in some of the professional courses without impairing the efficiency of the case system; and that time saved by such curtailment would afford opportunity not only for the wider public-policy consideration of legal principles incident to the discussion of cases, but also for the new courses in legal history, comparative jurisprudence and legislation.

There is surely much force, too, in the contention that the desired mental attitude for the lawyer of the future cannot be successfully laid on in a supplementary fourth year, as a veneer; that it must be made part of the inner grain of the student's legal thinking; and that this process must mainly be incidental to the consideration of cases in the strictly professional courses. The intellectual horizon and the personality of a really significant teacher in such handling of the professional courses certainly must impress deeply the minds of many of the students. But it must be doubted that the average law student without a foundation of training in social sciences is capable of doing his own thinking in such classroom discussion. Co-ordinating with this view, is the strong emphasis laid to-day by some of the universities upon their "pre-legal" courses not in legal subjects, but in history, economics, sociology and

¹⁴ Karl von Lewinski, "The Education of the German Lawyer," Address, 1908, *American Bar Assn.*, Vol. XXXII, p. 814.

philosophy. This would seem to foreshadow a system of legal education in which the university student in his junior, or even in his sophomore year, must make his definite vocational choice of law, and complete the pre-legal courses as a condition to his admission to the law school. Let it be said here that methods in the colleges of teaching history and economics in turn need the sociological touch, in order that the pre-legal work there shall realize its full purpose. History needs to be made more of a subjective study in social evolution, and economic theory needs to be pursued more from the standpoint of its successive philosophical backgrounds. There can be no doubt that pre-legal training in the colleges can largely enhance the value of the new teaching to be done in the law schools, whether where cases are to be tested in the light of public policy, or where a synoptical and critical review is being given of the development of law in the light of public policy, or where comparative law and the principles of legislation are being studied. It is to be hoped that by the compulsory pre-legal work in the colleges, which would greatly accelerate the student's processes of absorption in the law school, and by a reduction in the number of cases examined and discussed in class, the necessity for the fourth year in the law school course can be averted. If it must come, it had better be carved out from the college course than be taken from the lawyer's years of practice. But all other considerations must adjust themselves finally to the irresistible demand for the new legal education.

While thinking of to-day's problems, we have been discussing what our law needs. Ahead of us are problems still more crucial and complex; their legal solutions may perhaps be neither individualistic nor collectivistic, but they must be applications of a public policy scientifically conceived. The questions of centralization and co-operation alone, together with the further advances in science, will overturn many established standards of thought, and will call for our every power of vision and adjustment. Our legal house must be in order. The public and the university

administrators should urge the leaders in legal education to work out their new system with as little delay as may be consistent with soundness, and should then stand ready to support it. Heretofore the law schools have been mainly the recorders and systematizers of the law. Let them not fear to enter a larger field. Let them define and promulgate principles for the status of the legal precedent, and for the policy and technique of legislation. Let them, as a combined group of constructive thinkers, formulate and propound to the bar and to the legislatures statutory reforms of procedure and of evidence. Let them by the sociological, scientific method become, through their graduates at the bar and on the bench, the creators of a common law system capable of developing in closer responsiveness to shifting conditions and changing standards. Here they have a far greater task and opportunity than had the great codifiers or clarifiers of legal principle, the Babylonian lawyers of Khammurabi, or the advocates and teachers of Justinian; for they are called upon now, not to crystallize or to formulate law, but to instill into it the active germ of a conscious, creative evolution. It is a great ideal, and it may not be wholly attainable; but in the light of it, the American law school, without prejudicing its immediate function as a professional school, can become a mighty agent of progress.

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